



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

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File = Minerals

Memorandum

To: Director, Geological Survey
From: Deputy Solicitor
Subject: Mineral Surveys under the Wilderness Act

As a result of the meeting on February 16 in the Under Secretary's office during which we discussed the proposed North Cascades National Park, you informally requested us to advise you of the extent to which the Wilderness Act, 78 Stat. 890 (1964), 16 U.S.C. 1131 (1964), directs the Geological Survey to perform mineral surveys in wilderness and primitive areas administered by the Forest Service and in the National Park System and National Wildlife Refuge System areas administered by this Department. You were particularly interested in knowing whether the Wilderness Act requires a mineral survey in areas proposed for national park status which are being carved out of existing primitive areas.

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Initially, it should be pointed out that Section 3(a) of the Wilderness Act, 16 U.S.C. 1132(a), designated as wilderness only "those areas within the national forests classified at least 30 days before September 3, 1964, by the Secretary of Agriculture or the Chief of the Forest Service as 'wilderness', 'wild', or 'canoe'". Neither the primitive areas administered by the Forest Service nor any of the areas administered by this Department were designated as wilderness. Furthermore, Congress provided in section 2(a) of the act, 16 U.S.C. 1131(a), that "no Federal lands shall be designated as 'wilderness areas' except as provided for in this act or by a subsequent Act."

Congress did establish, however, a procedure by which additional Federal areas could be included in the Wilderness System by subsequent Congressional action. In section 3(b) of the act, 16 U.S.C. 1132 (b),

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Congress directed the Secretary of Agriculture to make a review, within 10 years, of the suitability or nonsuitability for preservation as wilderness of each area in the national forests classified on September 3, 1964, as primitive. In section 3(c) of the act, Congress also provided for the inclusion of Interior administered areas into the Wilderness System by directing the Secretary of the Interior to review, as to suitability or nonsuitability for wilderness preservation, roadless areas of the National Park and National Wildlife Refuge Systems exhibiting wilderness characteristics. The reviews and recommendations of the Secretaries would be for transmittal to the President for his recommendations to the Congress on future legislation adding new areas to the Wilderness System.

It is in this context that the Congress directed the Secretary of the Interior to perform certain mineral surveys. Specifically, Congress provided in section 4(d)(2) of the act, 16 U.S.C. 1133(d)(2):

. . . .

Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the Geological Survey and the Bureau of Mines to determine mineral values, if any, that may be present;
(Emphasis added.)

The words "such areas" as used in this section apply to only those areas administered by the Forest Service which were actually designated as wilderness by section 3(a) of the act. It follows, therefore, that the Survey is directed to perform mineral surveys in only those areas which were placed into the Wilderness System by section 3(a).

In this regard it is interesting to note that the Wilderness Act is silent on the issue of mineral surveys in primitive areas. Looking beyond the language of the act, the legislative history provides some

clues as to the intention of Congress on this question. The House Conferees in the Conference Report on the act (H.R. Rep. 1829, 88th Cong., 2nd Sess.) stated, "the Conference Committee expects the mining industry and agencies of the Department of the Interior will explore existing primitive areas. . . ." From this report it is apparent that although Congress did not direct the Geological Survey to undertake mineral surveys in primitive areas, Congress suggested that the Department perform some type of mineral survey in these areas in order that Congress, in considering Forest Service primitive areas for wilderness designation, would have available certain mineral information.

While the various committee reports express an interest on the part of Congress in having mineral surveys performed in Forest Service primitive areas, there is a complete lack of Congressional direction or expression of intent regarding the question of mineral surveys in lands administered by this Department. (See H.R. Rep. 1538, 88th Cong., 2nd Sess.; S. Rep. 109, 88th Cong., 1st Sess.) Accordingly, it is our opinion that the Geological Survey is under no statutory obligation to perform mineral surveys in National Park and National Wildlife Refuge System areas considered for inclusion in the Wilderness System.

In reaching the same conclusion as to such National Park and National Wildlife Refuge System lands, the Solicitor observed, in an opinion of July 15, 1965, subject "Wilderness Act Regulations":

The elements which go into the review of any particular roadless area under your jurisdiction are for your determination. Congress has not prescribed any particular type of review nor has it prescribed that mineral surveys must be made. However, before any area recommended by you for inclusion in the National Wilderness System can be included in that System, Congress must act favorably on your recommendation. Failure to include the results of a mineral survey in a given case may affect the weight accorded to your recommendation or to the recommendation of the President. It does not affect the legal validity of the review. Obviously the presence or absence of data bearing upon the

existence of minerals in an area recommended to be included in the National Wilderness System may, in some cases, be of considerable importance to Congress in determining whether your recommendation is to be approved.

The Department, through Secretarial Order 2893, dated February 17, 1965, laid down the policy that there will be mineral surveys on the minerals locatable under the mining laws in Mt. McKinley National Park, and Death Valley, Glacier Bay and Organ Pipe Cactus National Monuments, when these areas or portions of the areas are reviewed pursuant to the procedure established in section 3(c) of the act. The order also requires a mineral survey of minerals locatable in seven named game ranges and wildlife ranges and of the classes of minerals subject to leasing under the mineral leasing laws in all wildlife refuges and game ranges. Since these areas are already open to mining or mineral leasing, it was felt that mineral surveys would be a necessary part of the comprehensive review of the areas and of any recommendation to Congress.

To summarize, Congress has directed the Geological Survey to perform surveys on those Forest Service lands placed in the Wilderness System by section 3(a) of the act and expressed an intention that mineral surveys be performed in Forest Service primitive areas being considered for wilderness designation. The Secretary has directed the Geological Survey to make surveys and studies as specified in Order No. 2893.

In answer to the specific inquiry as to whether the Geological Survey is required to perform a mineral survey on an area proposed for national park status which is being carved out of an existing primitive area, it is our opinion that the Wilderness Act has no application. Under the Wilderness Act, and considering its legislative history, mineral surveys were only intended for primitive areas being studied and reviewed for wilderness status. National park status is a matter outside the scope of the Act.

Deputy Solicitor

cc:
Director, National Park Service ✓